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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	)))	CC Docket No. 94-54 RM-8012

REPLY COMMENTS OF ONECOMM CORPORATION

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October 13, 1994

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SUMMARY

Commenters overwhelmingly agreed with OneComm Corporation ("OneComm") in opposing extension of equal access obligations beyond existing MFJ-related requirements. The great majority of commenters also concluded that any cost/benefit analysis of 1+ equal access obligations shows that the high costs of implementation far outweigh any benefits. Commenters demonstrated that mobile service subscribers are indifferent to equal access, and that the imposition of further obligations could actually remove such favored consumer benefits as wide-area local calling. Intense competition in the commercial mobile radio service ("CMRS") market ultimately should determine the kind of access to long distance carriers ("IXCs") that mobile service providers must offer.

In assessing what, if any, obligations to impose on CMRS providers, particularly nondominant carriers, the Commission should be guided by the language and intent of Section 332, not by amorphous notions of "regulatory parity" urged by some commenters. Section 332 simply requires common carrier regulation of CMRS providers; it does not require absolutely uniform regulation. Similarly, the legislative history shows that Congress anticipated that CMRS providers could be regulated differently where it furthers the public interest.

Commenters generally agreed with OneComm that the current system of negotiated contracts for local exchange carrier ("LEC") interconnection to CMRS providers has worked well and should be retained. Adding tariff requirements would increase costs and reduce flexibility.

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REPLY COMMENTS OF ONECOMM CORPORATION

OneComm Corporation ("OneComm") hereby submits its Reply Comments in the above captioned proceeding. The Notice of Proposed Rule Making and Notice of Inquiry in this proceeding solicited comments on whether equal access obligations should be imposed on some or all commercial mobile radio service ("CMRS") providers, whether CMRS interconnection arrangements with local exchange carriers ("LECs") should be tariffed, and whether mandatory interconnection and resale requirements should be imposed on CMRS providers.

I. COMMENTERS OVERWHELMINGLY OPPOSE EXTENSION OF EQUAL ACCESS OBLIGATIONS TO CMRS PROVIDERS

The overwhelming majority of commenters in this proceeding opposed extending equal access obligations beyond the current requirements imposed only upon Regional Bell Operating Companies ("RBOCs") by the Modification of Final Judgment ("MFJ").[1] Most commenters noted that CMRS providers do not control bottleneck facilities and that costs of equal access obligations would outweigh benefits. For example, the Rural Cellular Association ("RCA") stated that in order to route traffic to a customer's preferred interexchange carrier ("IXC"), most RCA member companies would be required to spend more than $500,000 per switch, and some companies may have to replace their switches at greater cost.[2] RCA members also would incur the costs of customer education and administration of equal access.[3] GTE Service Corporation ("GTE") estimated that implementing equal access would cost more than $23,000,000, and if the Commission decides to alter cellular calling areas, the expense would be even greater.[4]

Even the handful of commenters favoring extension of equal access generally did so based upon a perceived need for regulatory parity and not because they believed equal access for all mobile services, in and of itself, is warranted. For example, The Bell Atlantic Companies ("Bell Atlantic") preferred the elimination of equal access

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1 Some forty commenters opposed extension of equal access.

2 Comments of RCA at 6.

3 Id. at 7.

4 Comments of GTE at 17.

requirements, but urged the extension of equal access to other CMRS providers in order to achieve regulatory parity.[5]

Very few commenters supported mandatory equal access requirements for CMRS providers as the preferred vehicle for customer choice of interexchange carriers.[6] In fact, as the record demonstrates, regulatory parity and consumer choice can be achieved without the burdensome, costly extension of equal access obligations to CMRS providers beyond existing MFJ-related requirements.

A. Section 332 Does Not Require That All CMRS Providers Be Regulated Alike

Some commenters used the concept of "regulatory parity" like a mantra, invoking it to justify the extension of the whole panoply of equal access requirements. OneComm urges the Commission to observe the precise language and intent of Section 332 of the Communications Act[7] rather than reflexively to follow amorphous notions of "regulatory parity."

Commenters supporting equal access based upon regulatory parity only made conclusory references to Congressional intent,[8] the purpose for enactment of Section

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5 Comments of Bell Atlantic at 4.

6 See, e.g., Comments of AT&T at 3.

7 47 U.S.C.A. § 332 (West Supp. 1994).

8 Comments of McCaw Cellular Communications, Inc. ("McCaw") at 4; NYNEX Comments at 6.

332,[9] the general principle of regulatory parity,[10] and marketplace distortions.[11] These commenters did not articulate reasoned bases why "regulatory parity" requires the extension of equal access obligations to all CMRS providers. For example, Bell Atlantic argued that extending MFJ equal access requirements only to some cellular carriers "is a serious regulatory inequity which Section 332 was intended to eradicate. . . . Failure to do so would violate Congress['] intent."[12] Similarly, NYNEX stated that "imposition of equal access obligations is necessary to implement Congress' directive that all CMRS providers compete under the same rules."[13] These and other comments, however, read requirements into Section 332 that are not there.

Section 332 does not require "that all CMRS providers compete under the same rules."[14] Rather, Section 332 simply requires that CMRS providers be regulated as common carriers. As OneComm's Comments noted, Section 332

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9 Comments of Bell Atlantic at 4; Comments of The Personal Communications Industry Association ("PCIA") at 9.

10 Comments of Pacific Bell and Pacific Bell Mobile Services at 2-3; Comments of Ameritech at 1.

11 Comments of PCIA at 9; Comments of Bell Atlantic at 4; Comments of McCaw at 4.

12 Comments of Bell Atlantic at 4.

13 Comments of NYNEX at 6.

14 Id.

has a twofold thrust: first, to limit state power over CMRS by further shifting responsibility to a federal scheme, and second, to remove the private carrier/common carrier dichotomy by reclassifying all CMRS providers as common carriers.

Congressional intent also demonstrates that differential treatment of CMRS providers is appropriate when it serves the public interest. Congress recognized that "market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services,"[15] and that, in promoting the public interest, the Commission would have "some degree of flexibility" in regulating.[16] Contrary to the views of some commenters, Congress did not require that any individual regulation must be applied "uniformly on all CMRS providers."[17] Differential common carrier regulation, where it furthers the public interest, would fulfill Congressional intent.[18]

Overzealous application of the notion of "regulatory parity" will result in the imposition of unnecessary, costly and burdensome regulations on nascent CMRS providers. Such a result does not serve the public

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15 H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 491 (1993) ("Conference Report").

16 Id.

17 Comments of McCaw at 4.

18 Conference Report at 491.

interest. OneComm urges the Commission to avoid crafting a regulatory model that mirrors goals and objectives of an antitrust court that are not appropriate for the emerging CMRS market.

B. The CMRS Market Already Provides Customers With Choices For Long Distance Service And Intense CMRS Competition Will Provide Additional Choices

Commenters pointed out that CMRS customers already can choose among IXCs by using 800 and 950 dialing access arrangements made available by many CMRS providers or through those CMRS providers offering 1+ access.[19]

OneComm offers 800 and 950 access to IXCs on both its digital and analog systems. OneComm's analog systems, however, are incapable of offering 10XXX access because they lack a switch to send automatic number identification ("ANI") to a LEC or IXC for customer billing. Moreover, converting a digital SMR switch to allow 10XXX access would be as expensive for OneComm as converting to 1+ access.

OneComm agrees that if 1+ access to the IXC carrier of choice were all important to customers, significant migration would have occurred and carriers offering bundled service would have lost market share.[20] However, there is no evidence of substantial migration,[21] demonstrating that

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19 See, e.g., Comments of GTE at 15; Comments of ALLTEL Mobile Communications, Inc. ("ALLTEL") at 6.

20 Comments of GTE at 16; Comments of ALLTEL at 6.

21 Id.

full equal access is not that important to mobile customers[22] and that the public's desire for access to IXCs has been satisfied through existing arrangements.[23]

In fact, mandatory equal access obligations likely would have the unintended effect of eliminating such customer-preferred services as wide-area toll free calling. Imposition of mandatory service areas for local calls, whether by LATA, MTA or other boundaries, would eliminate carriers' ability to carry toll-free calls crossing those boundaries. However, customer surveys demonstrate that wide-area local calling is more important to consumers than 1+ access to the IXC of choice.[24] Imposition of equal access obligations would remove what consumers want and replace it with mandated services they may not even care about.[25]

Mandatory equal access is simply not appropriate to the CMRS market, particularly for those nondominant carriers, such as specialized mobile radio ("SMR") operators

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22 Comments of Southwestern Bell Corp. ("Southwestern Bell") at 31.

23 Comments of GTE at 6-9.

24 Comments of Southwestern Bell at 31-33.

25 Comments of Bell Atlantic at 5-7, argue that marketing of local calling areas by non-MFJ cellular carriers "[d]istorts the [m]arket and [h]arms [c]onsumers" the remedy for which should be mandatory hand-off to IXCs. However, offering a feature favored by consumers does not "distort" the market, rather it fulfills consumer expectations. The remedy for any perceived inequity certainly is not to penalize consumers by removing a favored feature.

that do not have bottleneck facilities, cannot control prices, and cannot dictate service offerings to their customers. Intense competition among CMRS carriers and market forces should determine the nature of access to IXCs, as well as other service offerings. Such competition is virtually guaranteed by the allocation of 120 MHz of radio spectrum for personal communication services ("PCS"), the introduction of 220 MHz services, and the growth of the SMR industry. Nondominant carriers such as OneComm that offer bundled local and wide-area calling services will adapt their services if customer preferences demand it. Where consumers in the competitive CMRS market place a high value on 1+ access to the IXC of choice, market forces will incent carriers to offer that capability. However, the Commission should not mandate what is offered.

A possible middle ground may be to require unblocked access to 800 or 950 numbers, but not to impose any additional obligations.[26] Imposition of 10XXX access is unrealistic for SMR carriers because of its technical infeasibility and/or expense. Any additional equal access arrangements should be directed by market forces, rather than Commission mandate.[27]

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26 See Comments of GTE at 6-8.

27 See id. at 3-6.

II. EXISTING PROCEDURES FOR NEGOTIATED INTERCONNECTION AGREEMENTS BETWEEN LECS AND CMRS PROVIDERS HAS WORKED WELL AND SHOULD BE RETAINED

Commenters generally agreed with OneComm that the current system of negotiated interconnection agreements between LECs and CMRS providers works well and should be retained.[28] They also agreed that adding tariff requirements would reduce flexibility or increase costs, or both.[29] Moreover, commenters noted that "[t]ariffed interconnection would harm small carriers and new entrants."[30] Even commenters urging mutual compensation requirements opposed mandatory tariffing because it would raise costs and reduce flexibility, but not resolve compensation issues.[31]

OneComm restates its conviction that the existing system of negotiated contracts should be retained. The additional costs and reduced flexibility that tariffs would create do not warrant imposition of new regulation.

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28 See, e.g., Comments of Southwestern Bell at 63; Comments of BellSouth at 5.

29 Comments of Southwestern Bell at 63; Comments of E.F. Johnson Company ("E.F. Johnson") at 6; Comments of GTE at 39-40; Comments of BellSouth at 6.

30 See, e.g., Comments of GTE at 41-42.

31 See, e.g., Comments of American Personal Communications at 5; Comments of PCIA at 16.

III. CMRS RESALE AND INTERCONNECTION REQUIREMENTS ARE UNNECESSARY IN A ROBUSTLY COMPETITIVE CMRS MARKET

Commenters agreeing with OneComm noted that mandatory resale requirements would not achieve their purpose of stimulating competition because with an anticipated six or more CMRS carriers per market, robust competition will develop among facilities-based carriers.[32] The CMRS market is not a duopoly, like the cellular market, where resale was imposed in order to stimulate competition.[33] Specifically, "there is no basis to impose . . . resale obligations on SMR operators."[34]

Commenters also expressed skepticism that resale requirements stimulate competition.[35] Finally, commenters argued that imposing resale obligations could encourage competitors to delay or avoid making the significant investment necessary to build a system.[36]

OneComm reiterates its view that resale requirements should not be mandated at this time. The

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32 Comments of ALLTEL at 9.

33 Comments of Nextel Communications, Inc. ("Nextel") at 19-20.

34 Comments of The National Association of Business and Educational Radio, Inc. at 11.

35 See, e.g., Comments of AT&T at 14.

36 Comments of Nextel at 19-20.

Commission always retains the option of imposing resale obligations if competition does not develop as expected.

Similarly, commenters agreed with OneComm that it is premature to impose CMRS-to-CMRS interconnection requirements.[37] Commenters noted that CMRS providers lack monopoly control over essential facilities or market power giving them the incentive or ability to create substantial entry barriers.[38] Instead, CMRS providers should have the freedom to structure relationships according to market forces.[39] OneComm agrees that where relationships offering direct interconnection are not economically feasible, "calls could be routed between CMRS systems through the LECs and IXCs."[40]

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37 See id. at 18.

38 Comments of McCaw at 5; Comments of Southwestern Bell at 66; Comments of ALLTEL at 8; Comments of NYNEX at 13; Comments of Ameritech at 4; Comments of BellSouth at 11-12.

39 Comments of GTE at 46.

40 Comments of E.F. Johnson at 7.

CONCLUSION

The Commission is actively supporting the development of a robustly competitive CMRS market, exemplified by the launching of PCS and the rapid development of wide-area SMR systems. But the Commission also must craft a new, forward looking regulatory model for overseeing the growth of this industry. OneComm urges the Commission to use this opportunity to transition away from an outdated regulatory model based on antitrust considerations and to develop an approach that relies more on competitive forces to ensure that mobile service customers are well served.

Respectfully submitted,

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Vice President &
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October 13, 1994

CERTIFICATE OF SERVICE

I, Bonnie G. Eissner, do hereby certify that I have this 13th day of October, 1994, hand delivered copies of the foregoing document to the following:

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